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February 6, 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: **Notice of Ex Parte Presentation** — AT&T Petition for Declaratory Ruling,  
WC Docket No. 02-361 (Oct. 19, 2002)

Dear Ms. Dortch:

On Thursday, February 05, 2004, Ken Levy, Rick Askoff and I of the National Exchange Carrier Association, Inc. (NECA); David Bartlett of Alltel; David Zesiger of ITTA; Marie Guillory of NTCA; Steve Pastorkovich and Jeffrey Smith of OPASTCO, Judith Harris of Reed Smith, LLP and Michael McMenamin of USTA (the Associations), met with Commissioner Adelstein and Lisa Zaina of his staff.

In this meeting, the Associations discussed the urgent need to dismiss the above captioned Petition for Declaratory ruling. In particular, the Associations stated AT&T's VoIP service is plain long distance service that merely uses Internet Protocol for transport between interexchange carrier switches. AT&T continues to use switched access services and should therefore continue to pay for its use as currently required by FCC rules. The attached news article was shared with the Commissioner. Our presentation is summarized in the attached handout.

In accordance with the Commission's rules, a copy of this Notice has been filed electronically in the above referenced docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Colin Sandy", with a stylized flourish at the end.

Colin Sandy

cc: Commissioner Jonathan Adelstein  
Lisa Zaina  
Qualex International

## **AT&T Petition Would Hurt Rural Telephone Companies**

- AT&T's petition has been pending at the FCC for more than 15 months. Continued FCC inaction only invites more "free riders" and exposes rural consumers to unnecessary risk.
- Rural Telephone consumers are especially at risk:
  - Access charges account for more than \$2 Billion in small company revenues (interstate and intrastate).
  - Access revenues represent as much as 70% of small telco revenues.
  - An access charge exemption of IXCs' phone-to-phone IP telephony services could threaten the financial viability of small rural LECs and could affect consumers and impair customer service efforts by forcing rural LECs to delay network upgrades.
  - An access charge exemption may also release IXCs from paying into Universal Service funds at the federal and state levels, which would greatly threaten the viability of the fund and the provision of universal telephone service to rural consumers.
- AT&T's use of IP technology to transport a call doesn't equal "net protocol conversion." Calls originate as TDM and end as TDM – nothing new here.
- AT&T's use of IP technology to transport a call doesn't reduce in any way the LEC's costs of either originating or terminating a call.
- AT&T's request for preferential treatment that favors a specific technology is simply an attempt at regulatory arbitrage.
- From the end-user's perspective, a phone-to-phone IP call is no different than a traditional long distance call and should therefore be treated as such with regard to the application of interstate access charges.
- Reciprocal compensation payments are no substitute for access charges. Parties who argue that continued application of access charges to AT&T will impair further development of the Internet offer no evidence to support their claims.
- Every carrier paying access charges today would use IP telephony for transport if AT&T's petition is granted, thereby gutting the access charge system and leaving SLCs and USF to make up the difference.
- AT&T's petition must be dismissed promptly on procedural grounds. The declaration it seeks would be inconsistent with current rules that exempt only ISPs from access charges. Since AT&T is not claiming that it is an ISP, the relief it requests cannot be granted via declaratory ruling.<sup>1</sup>

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<sup>1</sup> Section 69.5(b) of the Commission's rules mandates that access charges be "assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services." AT&T has not been exempted from this rule. While AT&T may cite the 1998 *Report to Congress* as altering the current access charge regime, the *Report* had no Ordering clauses, and as such has no legal effect on §69.5(b). AT&T is also not claiming an exemption under the 1997 *Access Charge Reform Order*, which maintained a 1983 exemption for ISPs from access charges.



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## Dingell Signals Support for Regulating VoIP

A powerful member of the House is sending a clear signal to his lawmaker colleagues, cautioning them to avoid treating Internet telephony as something other than a telecommunications services.

Rep. John Dingell (D-Mich.), the ranking member of the House Energy & Commerce Committee as well as the most senior member of Congress, is calling for sweeping changes in the nation's communications laws and, at the same time, is urging the FCC to bring the emerging new technology of Voice over Internet Protocol (VoIP) into the regulatory fold.

"I recognize that the FCC may soon commence a proceeding on the regulation of one of the new services being rolled out in the marketplace -- Voice over Internet protocol, or VoIP, telephone service," Dingell said in Wednesday's (Feb. 4) full committee hearing focusing on telecom competition. "As the FCC moves forward in this proceeding, there are several economic and social implications that must be considered - among the most important are universal service, law enforcement, and 911 services.

"Based on recent news reports, I am concerned that the FCC Chairman [Michael Powell] is not sufficiently aware of these issues," Dingell continued. "I caution the FCC to step back from its apparent rush to reclassify this service as a so-called Title I information service. It may be far wiser for the FCC to regulate this service under Title II -- which was written to apply to voice service -- and then forbear where appropriate."

With respect to current telecom laws, Dingell said, "Despite all the advances in technology and, in particular, the digitization of modern communications networks, the industry is still governed by laws that were passed before the emergence of the Internet -- some even before the introduction of color television ... As we all know too well, however, the analog world contemplated by the Communications Act no longer exists. Instead, the marketplace now features a truly impressive array of products and services offered over networks that were barely on the drawing board when we passed the 1996 Act -- Fiber-to-the-home, hybrid fiber-coax, 3-G, Wi-fi, E-V-D-O, just to name a few. And what's even more amazing, in many cases today's digital networks are still governed by that old law.

"In contrast with the old networks that were all designed specifically to offer one particular service - such as analog voice - today's digital networks have no such limitations," he continued. "Voice, video, or data -- it simply doesn't matter. In the new digital world, bits are bits, and the only limits on a network's ability are bandwidth and software. "Mr. Chairman, despite what seems obvious to you and me, many in Congress do not seem to grasp these simple facts. Rather than modernize the Communications Act, we protect those who benefit from outdated laws. Rather than grasp the exciting possibilities of these new technologies, we choose to perpetuate the dying business models of certain politically entrenched companies. Rather than reward capital investment in new networks, we reward those companies -- who shall go nameless -- who feast like parasites off the hard work and investment of others."

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Dingell said he remains hopeful that Congress will soon "change course and fundamentally overhaul the law to reflect the advances in the modern communications marketplace." He added that he was encouraged by recent comments from Sen. Ted Stevens (R-Alaska) that he will look to reexamine the Communications Act during the next Congress.

"I intend to push this Committee to undertake a similar endeavor. Such changes are essential if we are to inspire new investments in our networks, create jobs, and rightfully reward those companies who are willing to risk their own capital," Dingell said.

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